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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,935	03/23/2004	Claire Svetlana Vishik	8285-676	2854
757	7590	08/10/2005		EXAMINER
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				HOOSAIN, ALLAN
			ART UNIT	PAPER NUMBER
			2645	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/806,935	VISHIK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Allan Hoosain	2645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,8,10-14,17 is/are rejected.
- 7) Claim(s) 6,7,9,15,16 and 18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/16/05.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## FINAL DETAILED ACTION

### *Allowable Subject Matter*

1. Claims 6-7, 9, 15-16, 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5, 10-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bergl et al. (US 6,246,751).

As to Claims 1, 10, with respect to Figure 1, Bergl teaches a method comprising:

(a) providing a presence device, 12 and 14, associated with a communication device, 28, the presence device operable in a biometric (first) mode and a non-biometric (second) mode;

- (b) if the presence device is operating in the first mode, biometrically authenticating a user using the presence device and receiving a presence confirmation input from the communication device (Figure 2, label 102,106 and Col. 5, lines 40-52); and
- (c) if the presence device is operating in the second mode, receiving a user-entered log-in input from the communication device and authenticating the user entered login input (Col. 5, line 64 through Col. 6, line 5); and
- (d) in response to (b) or (c), enrolling (updating) in a central presence database to indicate that the communication device is active for the user to receive at least one message (Col. 5, lines 40-52 and Col. 6, lines 5-15).

As to Claims 2-5,11-14, **Bergl** teaches the method of claim 1 wherein the communication device comprises a telephone, and wherein said biometrically authenticating comprises authenticating a voice of the user during a call using the telephone (Figure 2, label 104).

4. Claims 1,8,10,17 are rejected under 35 U.S.C. 102(e) as being anticipated by **HackbARTH et al.** (US 2002/0143877).

As to Claims 1,8,10,17, with respect to Figures 5-9, **HackbARTH** teaches a method comprising:  
(a) providing a presence device associated with a communication device the presence device operable in an image (first) mode and a login (second) mode (Figure 5, labels 503,504 and Figure 9, labels 907,429);

- (b) if the presence device is operating in the first mode, biometrically authenticating a user using the presence device and receiving a presence confirmation input from the communication device (Figure 9, label 908); and
- (c) if the presence device is operating in the second mode, receiving a user-entered log-in input from the communication device and authenticating the user entered login input (P0065-P0068); and
- (d) in response to (b) or (c), updating in a central presence database to indicate that the communication device is active for the user to receive at least one message (P0177-P0180 and P0192).

As to Claims 8,17, **Hackbarth** teaches the method of claim 1 wherein the presence device is embedded with the communication device (Figures 1 and 9).

#### *Response to Arguments*

5. Applicant's arguments filed in the 6/13/05 Remarks have been fully considered but they are not persuasive because of the following:

The Terminal Disclaimer was entered and the Double Patenting rejections were removed.

**Bergl** teaches that employees (users) are enrolled (database updated) and if users are not closely matched then services (message received) is granted (see cited passages in the instant office action). The 'prevention' argued by applicants is only one decision made when matching users identification. Prevention occurs when matching is close. Permission occurs

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when matching is not close (see cited passages in the instant rejection). Also, **Hackbarth** teaches a monitor which updates a table when users are present and allowed to receive messages (see cited passages in the instant office action).

Examiner respectfully invites Applicants to contact Examiner to discuss possible amendments for overcoming the prior art of record.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Ginter et al.** (US 6,389,402) teach a presence device which uses PINs or voice recognition to determine presence of users.

**Strubbe et al.** (US 6,721,706) devices which uses cameras to detect presence of users.

**Treyz et al.** (US 6,526,335) teach detecting presence of users in automobiles and stores.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any response to this final action should be mailed to:

**Box AF**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(571) 273-8300, (for formal communications; please mark "EXPEDITED PROCEDURE")

**Or:**

(703) 306-0377 (for customer service assistance)

Hand-delivered responses should be brought to Carlyle, Alexandria, VA 22313 (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Allan Hoosain** whose telephone number is (571) 272-7543. The examiner can normally be reached on Monday to Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Fan Tsang**, can be reached on (571) 272-7547.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

*Allan Hoosain*  
**Allan Hoosain**  
**Primary Examiner**  
**8/3/05**